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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 501

CAMMIE B. HOLMAN,

Appellant,

vs.

GUERDON M. MATTHEWS,
COMMISSIONER OF BANKS, STATE OF WISCONSIN,

Appellee.

AMICUS CURIAE BRIEF ON BEHALF OF INTERSTATE COLLECTORS ASSOCIATION, IN SUPPORT OF JURISDICTIONAL STATEMENT OF APPELLANT.

URBAN A. LAVERY,
First National Bank Bldg.,
33 South Clark Street,
Chicago 3, Illinois,
Attorney for Amicus Curiae.

J. P. MIKESELL,
Penobscot Building,
Detroit 26, Michigan,

JEROME B. MIKESELL,
202 South State Street,
Chicago 3, Illinois,
Of Counsel.

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INDEX.

PAGE

Interest of Amicus Curiae 1, 2

Particular Nature of the Interstate Business Involved in This Case 3, 4

Adverse Effect of Wisconsin Statute on All Interstate Collection Business 5

How This Case Arose 6, 7

Argument

Point I. Whether the Wisconsin Statute Here Involved, as Construed by the Wisconsin Supreme Court does Not Violate the Interstate Commerce Clause (Art. I, Sec. 8) of the Federal Constitution 8, 9, 10

Point II. The cases cited and Argued by Wisconsin Supreme Court Are Inapplicable to the Facts of This Case ..... 10, 11, 12, 13, 14, 15, 16 and 17

Point III. The Holding of the Wisconsin Court would Require Each Member of the Association Which is Amicus Curiae Here, to become Fully Domesticated in Wisconsin, Before they Could do any Interstate Collection Business in That State ... 17, 18, 19

Summary of Points I, II and III 20

Point IV. The Decision of the Wisconsin Supreme Court, insofar as it Purports to Distinguish the Case at Bar from the prior Decisions of the United States Supreme Court, Concerning Interstate Commerce, is Unsound. The Wisconsin Court Completely Ignores the Staggering Burden that This Decision Would impose upon all Interstate Collection business in Wisconsin—and incidentally upon all of the members of the Amicus Curiae 21, 22, 23

Point V. The Ruling of the Wisconsin Court Raises the Question Whether the Wisconsin Statute Here in Controversy, Does Not Invade the Field of Federal Regulation and of Federal Interstate Commerce, Which Congress Itself Has Pre-empted by

a) The Federal Trade Commission Act, 15 U. S. C. A. Sec. 45.

b) The Mail Fraud Act, 15 U. S. C. A. Sec. 1341.

c) The Fraudulent Claims Act, 15 U. S. C. A. Sec. 259..... 23

Conclusion 24, 25, 26

Appendixes.

Appendix I. Statement as to Interstate Collectors Association and Its Associated Members..... i, ii

Appendix II. Abstract of Depositions (Record pp. 46 to 61) .....iii, iv, v, vi, vii

Table of Cases Cited.

California v. Thompson, 313 U. S. 109.....10, 11
Cheney Brothers Company v. Massachusetts, 246 U. S. 47 9
DiSanto v. Pennsylvania, 273 U. S. 34.....15, 16, 17
Hartford Accident & Indemnity Co. v. Illinois, 208 U. S. 155 13
Holman v. Mathews, 270 Wis. 453, 71 N. W. (2) 368... 6
International Text Book Company v. Pigg, 217 U. S. 91 .....9, 12
Kelly v. Washington, 302 U. S. 1..... 15
Memphis Steam Laundry v. Stone, 342 U. S. 389..... 21
Metropolitan Finance Corporation v. Matthews, Commissioner of Banks, 265 Wis. 275, 61 N. W. (2) 502.. 6
Real Silk Hosiery Mills v. Portland, 268 U. S. 325..9, 16, 21
Savage v. Jones, 225 U. S. 501.....14, 19
Union Brokerage Company v. Jensen, 322 U. S. 202..11, 12

Statutes Cited.

Interstate Commerce Clause (Art. I, Sec. 8).....8, 10
The Federal Trade Commission Act (15 U. S. C. A. Sec. 45) 23
The Mail Fraud Act (Criminal Code 15 U. S. C. A. Sec. 1341) 23
The Fraudulent Claims Act (15 U. S. C. A. Sec. 259). 23
Wisconsin Collection Agency Law, "Appendix D" in Appellant's Jurisdictional Statement..... iv

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AMICUS CURIAE BRIEF ON BEHALF OF INTERSTATE COLLECTORS ASSOCIATION, IN SUPPORT OF JURISDICTIONAL STATEMENT OF APPELLANT.

INTEREST OF AMICUS CURIAE.

This Brief on behalf of the Interstate Collectors Association as *Amicus Curiae* (and its affiliated concerns as hereafter more particularly mentioned) is filed with the consent of all parties to this case and in accordance with Rule 42 of this Court.[1] A verified Statement about the several affiliated business concerns which are members of

(1) The formal "Consent" of all parties hereto (in accordance with Rule 42 of this Court) as signed by their respective Counsel of Record has been duly filed in the office of the Clerk for the Supreme Court of the United States, prior to the submission of this Brief.

said Association is set out as Appendix I at the foot o this Brief, where the names, addresses and approximat estimated amount of claims handled annually by each con cern is given. It there appears that each of those con cerns is engaged in a substantial way in various forms o interstate collection activity, analogous to the interstat collection business of the Appellant; and that the combine aggregate business of the members of the *Amicus Curia* is in excess of $20,000,000 per year. The great majorit of that volume of business is interstate in character, an consists of both wholesale and retail claims.

The case at bar directly involves the important in terests of the Appellant Holman as a "Solicitor" of col lection claims in various States, including Wisconsin, an also directly involves the important interstate busines of his principal, Metropolitan Finance Corporation o Kansas City, Missouri. But the case at bar also indirectly but equally adversely, affects the very much larger busi ness interests of the affiliated concerns who are member of this *Amicus Curiae*—as shown by Appendix I, alread mentioned.

THE PARTICULAR NATURE OF THE INTERSTATE BUSINESS INVOLVED IN THIS CASE.

The particular nature of the interstate business involved in this case, both on the part of Appellant Holman (and the two other independent "Solicitors"), and on the part of the Metropolitan Finance Corporation of Kansas City, Missouri, their principal, is fully indicated by Appellant's Jurisdictional Statement. But the nature of that interstate business is more particularly detailed in the Record (p. 46, *et seq.*) by certain testimony given at the hearing below by the witnesses, Holman and Meyers. It is highly important that this Court should know and understand the basic facts about those interstate business activities, both of those "Solicitors", and of their principal, Metropolitan Finance Corporation. Accordingly the substance of that testimony is set out at the foot of this Brief as Appendix II.

For our present purposes it may be stated that the testimony referred to shows in detail:

1. That the Appellant Holman (and the two independent "Solicitors"), while employed by the Metropolitan Finance Corporation (a Corporation of the State of Missouri) were directly engaged in Interstate Commerce, in various States of the Union; and that the Appellant (and the other two "Solicitors") attempted to solicit collection claims for their said principal in the State of Wisconsin; but that the Appellee herein, as Commissioner of Banks of the State of Wisconsin, refused to permit Appellant (and his associated "Solicitors") to solicit any such collection claims in that State, until they (and each of them), and their principal Metropolitan Finance Corporation had fully and formally complied with the provisions

of the so-called *Wisconsin Collection Agency Law.*[2] It further appears that the Appellant (and the other two "Solicitors"), and also the Metropolitan Finance Corporation, as their principal, have all refused to comply with such demand of the Appellee, on the ground the application of such Wisconsin Statute to them would be in violation of the Commerce Clause of the Federal Constitution. The present litigation is the result of such demand and such refusal.

2. It there further appears that the Metropolitan Finance Corporation, a foreign Corporation to the State of Wisconsin, as the principal of the Appellant (and the other two "Solicitors") is also directly and adversely affected by the demands of the Appellee (as set forth in paragraph 1 above) with respect to the Wisconsin Statute above mentioned; and that the said Metropolitan Finance Corporation is in fact actually excluded from doing interstate business in the State of Wisconsin, by the attempted application of the said Wisconsin Statute to the said Metropolitan Finance Corporation, by the Appellee, as Commissioner of Banks for the State of Wisconsin.

(2) The provisions of the Wisconsin Statute are set forth at length in "*Appendix D*" to the Appellant's Jurisdictional Statement, filed in the Supreme Court of the United States.

ADVERSE EFFECT OF WISCONSIN STATUTE ON ALL INTERSTATE COLLECTION BUSINESS.

It is the contention of the *Amicus Curiae* that the testimony last mentioned fully and clearly establishes the points, with respect to this *Amicus Curiae* (and its several associated members), that:

First: The general nature of the Interstate Commerce business of the Appellant Holman and of his principal Metropolitan Finance Corporation, closely parallels, in many respects, the general type of Interstate Commerce business conducted by the associated members of the *Amicus Curiae* herein.

Second: That the Interstate Commerce business of each of the associated members of the *Amicus Curiae* herein, will be seriously and adversely affected, in violation of the Interstate Commerce Clause of the Federal Constitution (Art. 1, Sec. 8), if the Opinion and Judgment of the Supreme Court of Wisconsin, rendered in this case, is not reviewed and reversed by the Supreme Court of the United States.

HOW THIS CASE AROSE.

In order to properly understand the serious Federal Questions involved in this Appeal, it is necessary to point out with some detail how the present case arose. The Record filed in this Court (as well as the Opinion of the Supreme Court of Wisconsin here appealed from) shows that this pending controversy arose as follows:

1. Prior to the litigation actually involved in the case at bar, there had been certain earlier litigation in the Wisconsin courts involving a closely related controversy; namely the direct question of the application of the Wisconsin Statute here involved to the Interstate Commerce rights of the Metropolitan Finance Corporation—the Missouri corporation already mentioned. That foreign Corporation (to Wisconsin) was and is the principal (as already indicated) not only of the Appellant Holman in the present case, but also of the other two "Solicitors", Meyers and Pinchin.[3] That controversy was terminated by the decision and Opinion of the Supreme Court of Wisconsin in the prior case of *Metropolitan Finance Corporation* v. *Matthews, Commissioner of Banks*, decided in 1953 and reported in 265 Wisc. 275, 61 N. W. (2) 502. The result is that the last mentioned Opinion of the Supreme Court of Wisconsin, must be closely read and related to the Opinion of the Supreme Court of Wisconsin in the case at bar, *Holman* v. *Mathews, etc.*, reported in 271 Wisc. 453, 71 N. W. (2) 368.

2. The decision and holding of the Wisconsin Su-

(3) See the Opinion of the Wisconsin Circuit Court (Appendix "A" to Appellant's *Jurisdictional Statement* (p. 1)) where it appears that a single Opinion of the trial Court was rendered in the three "Solicitors" cases filed in that court. By stipulation of the parties (see Wisconsin Supreme Court Opinion, Appendix "C" to Appellant's *Jurisdictional Statement*, p. 51) the three cases were consolidated for hearing in the Wisconsin Supreme Court.

preme Court in the prior case (as a reading of that Opinion will show) resulted in an indefinite and unsatisfactory decision and ruling, as to the actual effect of the Wisconsin Statute here involved, when laid alongside the Commerce Clause of the Federal Constitution. Because of that resulting indefinite and unsatisfactory state of the law in Wisconsin, the case at bar was thereafter filed in Wisconsin—evidently for the purpose of getting a more clear cut ruling as to whether the Wisconsin Statute is agreeable to—or violates—the Federal Constitution.

3. After a hearing in the Circuit Court of Dane County, Wisconsin, in the case at bar, that Court on February 7, 1955, entered a Judgment which recited that Appellant Holman was—

> "Engaged in Interstate Commerce in soliciting offers to assign accounts to Metropolitan Finance Corporation, and that therefore Section 218.04 Wis. Stats. does not apply to plaintiff under these circumstances."

The trial court's judgment further held that—

> "Defendant" (Commissioner of Banks) "be and he is hereby enjoined and restrained from enforcing or attempting to enforce said Section 218.04 Wis. Stats. against the plaintiff so long as he is so engaged."[4]

4. Thereupon the Appellee, as Commissioner of Banks of the State of Wisconsin, took an Appeal to the Supreme Court of Wisconsin, where the Judgment and Ruling of the trial court were both totally and completely reversed. The Judgment of the Supreme Court of Wisconsin here appealed from reads as follows:

> "By the Court: The Judgments are reversed, and the causes are remanded with instructions to vacate the Judgments and dismiss the Complaints."[5]

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(4) These facts are summarized from Appendix "B" (pp. 49-50) to Appellant's *Jurisdictional Statement*.

(5) For the Judgment of the Supreme Court of Wisconsin see Appendix "C" to Appellant's *Jurisdictional Statement*, p. 27.

FEDERAL QUESTIONS INVOLVED.

POINT I.

A Major Federal Question on This Appeal Is Whether the Wisconsin Statute as Construed by the Wisconsin Supreme Court Does Not Constitute a Substantial and Flagrant Violation of the Right of an Agent of a Foreign Principal (Such as the Appellant Here) to Solicit Orders for Transmission in Interstate Commerce, Contrary to the Interstate Commerce Clause (Art. I, Sec. 8) of the Federal Constitution.

It is fundamental that an agent for a foreign principal who enters a State for the sole purpose of soliciting orders for goods or services, acceptable at the home office of the foreign principal, is thereby engaged in Interstate Commerce, within the meaning of the Commerce Clause of the Federal Constitution (Art. I, Sec. 8). In the instant case the Appellant Holman, a non-resident of the State of Wisconsin sought to enter that State for the sole purpose of soliciting "offers of assignments" of accounts for collection, from various creditors, which offers were to be submitted for acceptance to his principal, in the State of Missouri, the Metropolitan Finance Corporation, a foreign corporation. The sole act to be performed by the "Solicitor" in the State of Wisconsin (it should be emphasized) consisted of the solicitation of offers for assignment, and the transmission thereof to the principal in the foreign State, for acceptance or rejection. We submit that the decisions of the United States Supreme Court are unanimous in holding that such business acts of an agent, in entering a foreign State, and soliciting offers acceptable to the home office of the principal, constitute Interstate

Commerce; and further that such business activities of the agent (as well as the succeeding business activities of the principal in accepting and processing such orders) may not be regulated adversely in the stringent manner provided by the various items of the Wisconsin Statute. The following are a few of the numerous cases which support the above propositions:

International Text Book Company v. *Pigg*, 217 U. S. 91.

Real Silk Hosiery Mills v. *Portland*, 268 U. S. 325.

Cheney Brothers Company v. *Massachusetts*, 246 U. S. 47.

Amicus Curiae will not discuss these basic cases in detail because they are fully covered in Appellant's Jurisdictional Statement.

The Opinion of the Supreme Court of Wisconsin first enumerates certain particular provisions of the Wisconsin Statute which (as the Wisconsin Court holds) are required to be complied with, by a foreign principal like the Metropolitan Finance Corporation, namely: (a) to post a bond; (b) to maintain a place of business; (c) to keep books and records which will be open for inspection; (d) to submit periodical reports; and (e) to take out a license both for the principal and its "Solicitors" in the State of Wisconsin, etc. The Wisconsin Court then says that these provisions—

> "Are similar to provisions considered in numerous U. S. Supreme Court cases which upheld the right of the State to control persons working within its borders, even though those persons are engaged in Interstate Commerce."

We submit that the quoted ruling and conclusion of the Wisconsin court is utterly erroneous. We submit

further that this Court has never held that a foreign State may impose such conditions as those listed above, as a prerequisite to entering a State for the mere purpose of soliciting orders in Interstate Commerce. Each of the cases we have cited above fully sustains both of the contentions we have above stated.

POINT II.

When the Interstate Commerce Cases Cited and Argued by the Wisconsin Supreme Court Are Read and Analyzed, They Will All Be Found To Be Inapplicable to the Facts In This Case, and Accordingly Are Clearly Distinguishable.

The case of *California* v. *Thompson*, 313 U. S. 109, cited by the Wisconsin Supreme Court, upheld a State law requiring transportation agents to be licensed, even though some of the tickets sold covered interstate transportation. In that case this Court said:

> "The statute is not a revenue measure * * *. It applies alike to transportation agents who negotiate for transportation intrastate as well as interstate and so does not discriminate against interstate commerce —*Cf. Real Silk Hosiery Mills* v. *Portland*, 268 U. S. 325. It does not appear that the regulation will operate to increase the cost of the transportation or in respects not already indicated, affect interstate commerce."

This Court further pointed out that a State may license trainmen, train-crews, limit speeds of trains, etc., without discriminating against interstate commerce. But this Court particularly said on that point (page 114):

> "The present case is not one prohibiting interstate commerce or licensing it on conditions which restrict or obstruct it." (Citing cases.) "For here the regulation is applied to one who is not himself engaged

in the transportation but who acts as a broker or an intermediary, * * *"

By no stretch of the imagination therefore can the *California* v. *Thompson* case be construed to sustain the holding of the Wisconsin Supreme Court in the instant case. The agent of the Metropolitan Finance Corporation in the instant case, unlike the transportation agent in *California* v. *Thompson,* was solely engaged in Interstate Commerce. He attempted to enter the State of Wisconsin from a foreign State for the sole and only purpose of soliciting orders for and on behalf of Metropolitan Finance Corporation, a corporation domiciled in the State of Missouri, the orders being acceptable only at the home office of the latter Company. Under the restrictive provisions of the Wisconsin Statute as interpreted by its Court, the Appellant here, before he would be permitted to solicit orders in the State of Wisconsin for transmission to the home office of the principal in the State of Missouri, must first procure a license for himself and pay a fee; and then comply with the other highly restrictive provisions of the Statute. Before operating under that license, his principal must also procure a license, post a bond, pay a fee, and establish and maintain a permanent office in the State of Wisconsin; as well as comply with those numerous restrictive statutory provisions. The effect of the Wisconsin Statute is to prohibit Interstate Commerce, unless the agent is licensed, etc.; and unless his principal also is licensed, is bonded and establishes an office in Wisconsin, all as required by the Statute. The actual result is that such a principal as the Metropolitan Finance Corporation (and indeed also the affiliated members of the *Amicus Curiae*) must actually *be domesticated* in Wisconsin, before they can do any Interstate business in that State.

The case of *Union Brokerage Company* v. *Jensen,* 322 U. S. 202, is also cited by the Wisconsin Supreme Court

as authority for sustaining the license provisions of the Wisconsin Statute. An analysis of this Court's Opinion in the *Brokerage Co.* case will show that the case cannot possibly be cited as an authority for sustaining the Wisconsin Statute. In the *Union Brokerage Co.* case, a Statute of Minnesota denied all foreign corporations the right to maintain an action in the Minnesota courts unless the foreign corporation, *doing local business,* had first obtained a certificate of authority and paid the fees required by the Minnesota Statute. The only question involved in the case was whether or not a foreign corporation which admittedly did *local business* in the State of Minnesota was exempt from the provisions of its Statute, inasmuch as the foreign corporation held a Federal license as a customs house broker. The Supreme Court merely held that the fact that the foreign corporation held such a Federal license did not exempt it from complying with the provisions of the Minnesota Statute concerning *local business.* The *Brokerage Co.* case is in harmony with all of the decisions of this Court on this question. It is fundamental that a foreign corporation which comes into a particular State, and engages in *local business* there, may be required to obtain a license and pay reasonable fees. We point out that in the Opinion in the *Brokerage Co.* case this Court clearly distinguishes the case of *International Text Book Company* v. *Pigg,* 217 U. S. 91—which point of distinction is entirely overlooked by the Wisconsin Court. There was no question of burdening Interstate Commerce in the *Brokerage Co.* case, and as indicated it did not purport in any manner to overrule the *International Text Book Co.* case; or indeed any other case decided by this Court, which had theretofore held that a State can neither prohibit or burden interstate commerce with a license requirement, such as that required by the State of Wisconsin in the instant case.

The Wisconsin Court has also cited *Hartford Accident and Indemnity Co.* v. *Illinois,* 298 U. S. 155, as supporting its decision. In the *Hartford* case an Illinois Statute required commission merchants, who solicit for sale and sell consignments of farm produce within the State of Illinois, to procure a license. In upholding that Illinois Statute this Court said in the *Hartford* case (page 157):

> "The statute is a police regulation. The business regulated is local, having its situs within the State and being conducted therein * * * such effect as the regulation has upon interstate commerce is indirect and incidental and does not trespass upon the power conferred on Congress."

As pointed out by this Court in its Opinion, the business in the *Hartford* case conducted by the licensee was *local.* On the other hand the business conducted by Appellant here as agent of Metropolitan (as well as the agents of all the other concerns who are members of this *Amicus Curiae* Brief) is not *local,* in any proper sense of that term. The business involved in the case at bar is essentially Interstate Commerce, since it consists in entering the foreign state for the solicitation of orders acceptable at the home office of the foreign corporation. We submit therefore that the *Hartford* case, likewise, has no application whatsoever to the issues in this case.

"Solicitation" Only Involved Here.

In the facts presented by the case at bar there is not a single activity of either the Appellant, as a "Solicitor" (or of his foreign principal) which can be properly construed as anything except "Solicitation" in the sensible interpretation of that term. The Wisconsin Court in its Opinion mentions the "Instructions to Solicitors", issued by the Metropolitan Company and the "Solicitor's Man-

nal" furnished by the Company to its agents, and also the statement by the Company of what type of accounts are acceptable, as well as the guarantee to each "Solicitor" of certain exclusive territory, as if such activities went beyond the proper use of the term "Solicitation." We respectfully contend that such "Instructions" and such "Manual" etc. are entirely proper as a part and parcel of the idea of "Solicitation." For the Wisconsin Court to contend that such things amount to "doing business" in Wisconsin, and that these matters go beyond the proper scope of "Solicitation," is to jump at a conclusion that is in no way warranted by the facts. If business concerns doing an Interstate business were to have their hands tied in the manner suggested by the Wisconsin Court, and were to be forbidden from giving "Sales-Instruction", or giving such assistance to their "Solicitors", as disclosed by the facts of this case, then it would be a practical impossibility for them to operate in Interstate Commerce, through the medium of a "Solicitor." Indeed the contention of the Wisconsin Court in this respect would be to force every concern doing an Interstate collection business in Wisconsin, through "Solicitors", to become subjected to full local control in that State of all their business conducted there.

Three Remaining Cases Distinguished.

The Wisconsin court also cites and relies on the case of *Savage* v. *Jones*, 225 U. S. 501, as supporting its position in the case at bar. Actually the *Jones* case is strongly adverse to the Wisconsin Court's ruling here, because this Court said in that case, speaking through Chief Justice Hughes (pp. 524-525):

> "The state cannot, under cover of exerting its police powers, undertake what amounts essentially to a regulation of interstate commerce, or impose a direct bur-

den upon that commerce. [Citing cases.] But when the local police regulation has real relation to the suitable protection to the people of the State, and is reasonable in its requirements, it is not invalid because it may incidentally affect interstate commerce, providing it does not conflict with legislation enacted by Congress pursuant to its constitutional authority." (Citing cases.)

The provisions of the Wisconsin Statute would require the Appellant Holman to procure a license, and comply with the other restrictive statutory provisions; and further would require his principal, the foreign corporation, to procure a license, pay a fee, put up a bond, establish and maintain a local office, and procure a license for its solicitors, before they may solicit orders in interstate commerce in that State. We submit that these regulatory provisions do not "*incidentally affect Interstate commerce*" (to use Chief Justice Hughes' phrase) but are *a direct and drastic interference* with Interstate commerce.

The case of *Kelly* v. *Washington*, 302 U. S. 1, is also cited by the Wisconsin Court as sustaining its position in the instant case. The *Kelly* case involved a Washington Statute which required an inspection of motor driven tugs. There was no Federal Statute covering the subject. The case falls in with a long line of similar cases decided by this Court permitting the licensing of engineers, trainerews, tugboat operators, and the like, as long as there is no conflicting Federal Statute indicating that Congress has occupied the same field, through appropriate legislation. The case has no application whatsoever to the issues raised by the case at bar.

The weakness of the position of the Wisconsin Court is illustrated by its reference to, and its comment on, the decision of this Court in *Di Santo* v. *Pennsylvania*, 273 U. S. 34, decided in 1927. The Wisconsin Court mentions the

fact that the *Di Santo* case has been overruled by later decisions of this Court; and then argues that such reversal tends to support its holding in the instant case. But the present rule as established by this Court, even having in mind the *Di Santo* case, clearly shows the fallacy of the reasoning of the Wisconsin Supreme Court.

The *Di Santo* case, as is well known, was decided by a divided court in a six to three division. A majority of the Court held that a Pennsylvania Statute requiring agents selling foreign steamship tickets in Pennsylvania to be licensed, was unconstitutional. A dissenting Opinion was filed by Justice Brandeis, in which Justice Holmes concurred, in which dissent it was said:

> "Unlike the measure considered in *Real Silk Mills* v. *Portland*, 268 U. S. 325, 326, this Statute is not an instrument of discrimination against interstate or foreign commerce. Unlike that considered in *Shafer* v. *Farmers Grain Company*, 268 U. S. 169, 199, it does not affect the price of articles moving in interstate commerce. The licensing and supervision of dealers in steamship tickets is in essence an inspection law."

As pointed out in the above dissenting Opinion, the Supreme Court has consistently upheld State laws involving reasonable inspection, and other similar Statutes, which affect commerce only indirectly, or incidentally. Moreover the dissenting Opinion of Justices Brandeis and Holmes expressly approved and distinguished the case of *Real Silk Hosiery Mills* v. *Portland, supra.* Accordingly there is nothing in the Brandeis and Holmes dissent which in any way reflects adversely on this Court's prior decision in the *Silk Hosiery Mills* case—as the Wisconsin Court attempts to intimate. Justice Stone also dissented in the *Di Santo* case, pointing out that local regulations "which do not impede the flow of commerce" have been consistently upheld by the Supreme Court.

We respectfully submit, therefore, that there is nothing in the present interpretation and application of the *Di Santo* case (nor in the dissenting Opinions above referred to) which in any way gives aid or comfort to the Wisconsin court, in its comment about that case. On the contrary, the overall view of the law about the Interstate Commerce Clause of the Federal Constitution (including the present view of the *Di Santo* case) as now established by this Court, strongly tends to condemn the Wisconsin Statute here in controversy.

POINT III.

The Holding and Judgment of the Wisconsin Court Here Appealed from Would Actually Require and Compel the Metropolitan Finance Corporation of Missouri (Which Is Directly Involved in the Present Appeal) to Become Fully Domesticated in the State of Wisconsin.

Moreover the Ruling and Decision of the Wisconsin Court Would Likewise Require Each of the Members of the Amicus Curiae (as Particularly Listed Herein) to Become Fully Domesticated in the State of Wisconsin Before Any of Them Could Do Any Interstate Commerce Collection Business in That State.

We have already commented in strongly adverse terms about the drastic requirements of the so-called "Wisconsin Collection Agency Law"[6]—if it is to be applied to Interstate Commerce business in Wisconsin. We think that these statutory provisions speak for themselves; and that, as argued in the *Jurisdictional Statement* of the Appellant (as well as argued in this *Amicus Curiae* Brief), those statutory provisions violate the guaranty of the right of In-

(6) For the text of this Wisconsin Statute see *"APPENDIX D"* to the *Jurisdictional Statement* of Appellant pp. 28 to 34, where the text of the Statute is set out.

terstate Commerce under the Commerce Clause of the Federal Constitution.

Further Drastic Administrative Regulations.

But over and above the specific statutory regulations we have just referred to, the Record here shows that even a more drastic and prohibitory set of "Administrative Regulations" have been adopted in Wisconsin by the Appellee as Commissioner of Banks, purporting to act under the authority of the Wisconsin Statute. These administrative regulations are likewise set out in substance in Appendix "E" to the *Jurisdictional Statement* of the Appellant (pp. 35 to 39). However, for the convenience of the Court a summarized abstract of these "Administrative regulations" is set out here in a marginal note.[7]

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(7) "Regulation of Licensees Under Section 218.04."
(*Abstract of "Regulations"*)

"The Commissioner of Banks of Wisconsin being empowered under the provisions of Section 218.04 to make all necessary orders, rules and regulations for the administration and enforcement of said section, hereby orders that:

Par. 1. *"All agreements, contracts* • • • *, form letters"* etc. to be used "by any licensee" *are required to be submitted to the Commissioner for "his approval"*, before they can be used.

Par. 2. "Upon receipt of any account for collection" the licensee is required to furnish the claimant "with an agreement", which "agreement" is required to be detailed in accordance with four specified paragraphs, which are set out as "A", "B", "C" and "D"—an unjustifiable and arbitrary specification of the manner in which the office-business of the licensee is to be conducted.

Par. 3. When any licensee makes any "remittance" to a claimant, a specified "remittance statement" is required to be sent the claimant which again requires specific arbitrary details as set out in items "A", "B", "C", "D" and "E" of paragraph 3 thereof.

Par. 4. "Every licensee" is required to keep *"available for inspection by the Commissioner for a period of at least six years"*, accounting records etc. *"which shall include the following"*: Here again is set out 9 separate specified arbitrary types of "paper-

It is evident, we believe, from a mere reading of these Administrative Regulations that they constitute what we have called a set of arbitrary and unjustifiable conditions precedent, to doing any Interstate Collection business in Wisconsin. Here is a long list of hampering and burdensome Administrative restrictions (over and above the terms of the Statute itself), which have never had any specific recognition or sponsorship by the Wisconsin Legislature. Indeed they are a type of restrictive regulations which could not be legally imposed on Interstate Commerce even by the State Legislature itself, in view of the guaranties of the Commerce Clause of the Federal Constitution. These numerous restrictive and prohibitory "Regulations", which hinder and hamper the ways and means ordinarily adopted by business men in the conduct of Interstate Commerce, are in no sense "incidental", in their restrictive effect on commerce—to use the test laid down in the language of Chief Justice Hughes in the *Savage* v. *Jones* case above discussed. On the contrary these "restrictive" Regulations would necessarily have the effect of smothering and preventing the normal and usual conduct of Interstate Commerce in that field, in Wisconsin. Such needless and unjustifiable "paper-work" required of every foreign concern doing a collection business in Wisconsin shocks the common sense, we say, of any reasonable person. Indeed the doctrine of *res ipsa loquitur* logically applies to this drastic set of "Administrative Regulations", and renders them obnoxious to the Commerce Clause of the Federal Constitution.

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work" required to be constantly kept on hand and made available to the Commissioner of Banks.

Summary of Further Administrative Requirements.

Pars. 5 to 21. In addition to the above, the "Administrative Regulations" of the Commissioner of Banks are further set forth in detail in 16 separate additional paragraphs. The particular specifications of these 16 "Regulations" are equally arbitrary and unjustifiable; but they need not be further elaborated here.

Summary of Points I, II and III.

The foregoing Argument under **Points I, II and III** of this *Amicus Curiae* Brief is intended to support the convincing Argument about these same objections found in the Appellant's *Jurisdictional Statement.* In summarizing that argument we respectfully say that it strongly tends to show that the Wisconsin Statute here involved impinges upon and violates:

First, the Interstate Commerce rights of the Appellant Holman (and the two other independent "Solicitors"), in respect of their right to do Interstate business in Wisconsin.

Second, the Interstate Commerce rights of the Metropolitan Finance Corporation, a foreign corporation of the State of Wisconsin, and the principal of those "Solicitors".

Third, the Interstate Commerce rights of the several members of this *Amicus Curiae,* as listed herein, whose right to do Interstate Commerce business in Wisconsin will be effectively prevented and prohibited, if the ruling and judgment of the Wisconsin court here appealed from is permitted to stand.

POINT IV.

The Decision of the Wisconsin Supreme Court, Insofar as It Purports to Distinguish the Instant Case from the Decision of the United States Supreme Court in Real Silk Hosiery Mills v. Portland and Memphis Steam Laundry v. Stone, Is Unsound, and Completely Ignores the Staggering Burden That Its Decision Imposes Upon the Plaintiff and His Principal, as Well as the Amicus Curiae and All Its Members Who Are Engaged in a Nation-wide Collection Business.

The Mississippi Statute in the Memphis Steam Laundry case (342 U. S. 389) imposed a tax of $50.00 for each county in which an unlicensed nonresident solicited laundry business, while resident solicitors paid $8.00 per truck. In striking down the above provisions of the Mississippi Statute, this Court said (392-3):

> "A tax imposed upon the solicitation of interstate commerce is a tax on interstate commerce itself."

Likewise, in the Real Silk Hosiery Mills case (268 U. S. 325), this Court said, in holding that the municipal ordinance violated the Interstate Commerce Clause of the Federal Constitution (336):

> "Negotiation of sales of goods which are in another state, for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce."

The statement of the Wisconsin Supreme Court that the fact that the offending regulation was a city ordinance distinguishes the *Real Silk Hosiery* case, is wholly insupportable. The Wisconsin Court failed to point out in just what particular the solicitation of an order for laundry service, or an order for hosiery, is to be distinguished from a solici-

tation for an order for the services of Metropolitan. Th distinction we submit is a distinction without a difference

The further statement of the Wisconsin Supreme Cour that the provisions of the Wisconsin Collection Agenc Law do not impose an "undue burden" upon an Interstat Solicitor, completely ignores the practical aspects of th situation. The business operations of Metropolitan, a well as of most of the other members of the *Amicus Curia* herein, are nation-wide. The Record here (see Ap pellant's Jurisdictional Statement, p. 51), shows tha Metropolitan operates a national business from its offic located in Kansas City, Missouri. One office would ordi narily be maintained by each member of the *Amicus Curia* and by most of the hundreds of other American firms en gaged in doing an Interstate collection business.

If the State of Wisconsin can force Metropolitan an all the other members of the *Amicus Curiae* to maintai a local office as a condition precedent to the right to solici orders in Interstate Commerce, every state in the unio could impose the same burden upon like concerns. Th effect of such legislation would be to require Metropolita to equip and maintain forty-seven additional offices in th United States as a prerequisite to sending its agents int the remaining states to solicit orders for its business. Th following practical analysis will indicate the actual effec of upholding this Statute:

Computing rent at a nominal cost of One Hundre ($100.00) Dollars for each office, this requirement woul involve an outlay of $4,700.00 per month, or $56,000.00 pe year for this one item. One clerk in each office drawing salary of $200.00 per month, would result in an additiona outlay of $113,000.00 per year. If we add to these figure the cost of maintaining forty-seven additional telephone the like number of office files, equipment and sets of book

not to mention the forty-seven state reports and tax returns required of domesticated corporations, the total result is staggering. It is self evident that if this Court were to countenance this Wisconsin Statute, requiring every corporation to maintain an "active office" in Wisconsin, in other words, to domesticate itself, such a decision would ultimately operate as a death sentence to the interstate collection business.

POINT V.

A Fourth Federal Question Is Whether the Wisconsin Statute Here in Controversy Does Not Invade the Field of Federal Regulation of Interstate Commerce, Which Congress Itself Has Pre-empted by:

(A) The Federal Trade Commission Act (15 U. S. C. A. Sec. 45);

(B) The Mail Fraud Act (Criminal Code, 15 U. S. C. A. Sec. 1341); and

(C) The Fraudulent Claims Act (15 U. S. C. A. Sec. 259).

The above Federal Question (in its several aspects as above indicated) is fully and ably argued in Appellant's *Jurisdictional Statement*, pages 31 to 34. For purposes of brevity this *Amicus Curiae* adopts and accepts as fully adequate and convincing, the logical statement about that Federal Question which Appellant has set forth. Further elaboration of the point seems unnecessary here.

CONCLUSION.

This cause at its present stage in this Court is pending on the strict issue of whether substantial Federal Questions are disclosed by the Record, sufficient to justify and require that the court review the ruling and decision of the Supreme Court of Wisconsin. This *Amicus Curiae* Brief has accordingly been presented in support of the above issue on behalf of a group of business concerns who are closely and intimately familiar with the actual operation and conduct of all phases of the Collection business, in the United States, on a nation-wide scale and basis. It is felt that the views and presentation of these business concerns should be informative to this Court and should help in demonstrating the significance of the Federal Questions here involved. For that reason, it has been the purpose of this Brief to advise and inform the Court about some of the more practical aspects of the Constitutional issues here presented. After all there is hardly any phase of our American Law that is more *practical* in its operation and effect, or is more *essential to the National Economy*, than the legal and Constitutional principles having to do with Interstate Commerce. We are told that Jeremy Bentham, the great English Law-reformer, always insisted that the practical aspects of the Law must be put first in any consideration or appraisal of particular legal questions. Thus it has been said that Bentham repeatedly insisted that:

> "Law is a matter of business; means and ends are the things to be considered; not abstractions; vagueness is not to be met by vagueness, but by definiteness and precision; details are not to be countered with generalities, but with details."[8]

8. See John Stuart Mill's noted Essay on Jeremy Bentham, found in Mill's "*Dissertations and Discussions*", Vol. I, p. 397.

It is from that practical and every day point of view that this *Amicus Curiae* Brief has been prepared. It is our hope that the presentation of the Constitutional issues here involved, which are so ably set forth in the *Jurisdictional Statement* of the Appellant, and as supported by this *Amicus Curiae* Brief, clearly demonstrate the need and necessity that the decision of the Supreme Court of Wisconsin here involved should be reviewed by this Court. To summarize the Argument in favor of such review, we say, that the following important practical issues have been raised:

1. Whether the Wisconsin Statute does not impose a heavy burden on all Interstate Collection business that is actually in violation of the Commerce Clause of the Federal Constitution; and that if the Wisconsin Statute is allowed to stand it will become a precedent that is likely to spread to many of the other States of the Union. Thereby a substantial part of the Interstate Collection business in the entire nation will be adversely affected and in part at least destroyed.
2. Whether the provisions of the Wisconsin Statute, and particularly the "Administrative Regulations" which have been put in force under the Statute do not deprive business concerns engaged in Interstate Collection of their rights under the Federal Constitution, and particularly under the Commerce Clause thereof (Art. I, Sec. 8).
3. Whether that Wisconsin Statute and those "Administrative Regulations" may be considered as "of purely local concern", as the Wisconsin court holds; and whether the decision of the Wisconsin court has not ignored the realistic fact that a major and dominating part of the Collection business conducted in the United States is of an Interstate character.
4. Whether the Collection business, as presently carried on in the United States, is not dominantly a commercial enterprise, of the same general character in many respects as any other Interstate business; and whether there is any sound reason, which has been

established in this case, to show why Interstate Collection business should be subjected to the severe harassment which the Wisconsin Statute and the Wisconsin Regulations lay down, while other Interstate business goes entirely free in Wisconsin from such restrictive regulations.

5. Whether a sensible appraisal of the situation presented by the Wisconsin Statute and the "Administrative Regulations" adopted in that State really involve any substantial "public interest" as the Wisconsin Court contends; or whether those restrictive Regulations are not implicitly designed to exclude Interstate Collection business from Wisconsin. To put the matter another way the question is raised whether there is any genuine ground under the "Police Power" of the State of Wisconsin to justify that State in effectively poisoning the right to do this type of Interstate Commerce within its borders, as the Record here discloses.

For the reasons above set forth it is respectfully submitted that the Federal Questions presented by this Appeal are substantial, and require full consideration on the merits by this Court.

Respectfully submitted,

URBAN A. LAVERY,
First National Bank Bldg.,
33 South Clark Street,
Chicago 3, Illinois,
Attorney for Amicus Curiae.

J. P. MIKESELL,
Penobscot Building,
Detroit 26, Michigan,

JEROME B. MIKESELL,
202 South State Street,
Chicago 3, Illinois,
Of Counsel.

[November 17, 1955.]

APPENDIX I.

Statement as to the Interstate Collectors Association and Its Associated Members.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Jerome B. Mikesell, being first duly sworn, deposes and says that he is the President of Power's Service, Inc., hereinafter mentioned in this Statement; that he is the Acting President of Interstate Collectors Association, *Amicus Curiae* herein; and is duly authorized to make this Affidavit concerning the matters hereinafter set forth.

Affiant states that the Interstate Collectors Association is an unincorporated Association composed of individuals and business concerns engaged in various forms of collection activity, both wholesale and retail, in various States of the United States, including Collection Agencies which operate on a commission basis, and contract letter mailing services devoted to the collection business.

Among the members of the said Association are:

1. Midland Finance Corporation, 20 W. 9th St. Bldg., Kansas City, Mo., approximate estimated amount of claims handled annually $1,000,000.00;
2. United Financial Service of America, 247 Plymouth Building, Minneapolis, Minn., approximate estimated amount of claims handled annually $3,500,000.00;
3. Power's Service, Inc., 202 S. State Street, Chicago, Illinois, approximate estimated amount of claims handled annually $10,000,000.00;
4. United States Association of Credit Bureaus, Inc., 4809 W. 159th Street, Oak Forest, Illinois, approximate amount of claims handled annually $7,000,000.00;

5. Nation-wide Service Corporation, 1579 Milwaukee Ave., Chicago 22, Illinois, approximate amount of claims handled annually $300,000.00;

6. General Finance Company, Pickwick Building, Kansas City 6, Mo., approximate estimated amount of claims handled annually $1,840,000.00;

7. Honor Loan & Finance Company, P. O. Box 265, Hill City, S. Dakota, approximate estimated amount of claims handled annually (not available);

8. Square Deal Collection Service, 109 N. Dearborn Street, Chicago, Illinois, approximate estimated amount of claims handled annually (not available);

9. Metropolitan Finance Company, 1129 W. 41st St., Kansas City, Mo., approximate estimated amount of claims handled annually, $1,500,000.

The purpose of the Interstate Collectors Association is to encourage and protect a free market and to strive for free competition in the Collection Business and Credit Business, on a nation-wide basis, as guaranteed by the Commerce Clause of the Federal Constitution.

Further Affiant saith not.

JEROME B. MIKESELL.

Subscribed and sworn to this 27th day of October, 1955.

HECTOR O. SEYMOUR,

(NOTARIAL SEAL) *Notary Public.*

APPENDIX II.

Abstract of Depositions of Cammie B. Holman and H. J. Meyers (formal parts omitted).
[Record, pages 46 to 61.]

Cammie B. Holman.

Direct Examination by Mr. Tulane.

My name is Cammie B. Holman. My residence is at Opp Avenue, Andalusia, Alabama. * * * That has been my home for five years, although I am on the road most of the time. I am 41 years old, married and a traveling salesman. At present I * * * solicit delinquent accounts. I solicit delinquent accounts for the Metropolitan Finance Corporation and for no other person. I have been soliciting such accounts for five years. I travel outside of Alabama in about eight states. They are: Florida, Alabama Georgia, Louisiana, Mississippi, Arkansas, Texas, Oklahoma, Missouri and Wisconsin. Those are the states I worked in. * * * I worked in Wisconsin about eighteen months ago for about a month. I worked mostly in Madison, LaCrosse, Waukesha and Milwaukee. * * * I was soliciting accounts for the Metropolitan Finance Corporation.

At the time I worked in Wisconsin I contacted doctors, merchants and service stations, and so on, and explained our service to them, inquired whether or not they had delinquent accounts and if they did, made an effort to secure them for collection. * * * I called on the Waukesha Memorial Hospital. When I called on the Hospital, I introduced myself just as C. B. Holman. I told them I represented a firm who made a specialty of collecting delinquent accounts. I named the firm.

* * * I told them * * * that we specialize in the

collection of delinquent accounts, that we accept accounts going back over a period of years, in many years going back as far as 1947. We don't have anything to sell. Commission is strictly on a no collection, no charge basis. In other words, the commission applies only to the actual amount the Company collects for them so if there is no collection, there is no charge.

* * * * *

I do not make a regular tour through the eight states that I have named. I have worked in all of those states over the past five years. I have developed a reasonable amount of business in each state.* * *

* * * * *

After I have solicited accounts in a town, I find it profitable to go back the second time. * * * I have already explained the initial contacts by which I do business. * * *

My second visit would only be to drop in to see the person who has listed accounts with me and if he is pleased with the service, then to pick up possible prospects from him.

The Metropolitan Finance Corporation has published a pamphlet containing a letter which I have seen recommending the Company or its representative, C. B. Holman, to anyone having delinquent accounts.

When I solicit accounts, I prefer the smaller towns. That preference is based on my own experience. I did not myself suggest to the Metropolitan Finance Corporation that my particular type of solicitation would work better in a smaller town. * * * I have seen a document similar to that marked Defendant's Exhibit 2 [to the deposition] when I got my first contract with permission to sell account. It is called a Solicitor's Manual.

I don't recall I got it at that time but I say I got instructions similar to that on how to solicit accounts. In

other words, what the Company would accept and what it would not accept, to try to keep me straight on the law, and so on. I don't recall if I ever got a second solicitor's manual.

* * * * *

Exhibit No. 5 [to the deposition] is the form which I am presently using to transmit accounts to the Metropolitan Finance Corporation. After I transmit a list of accounts on such a form, they send my commission check to me. I understand the check is mailed on receipt of the accounts. Thereafter I have no further contact with that account. I never call on a particular creditor involved again. If I do, it would be more or less on a friendly basis to determine whether or not he is pleased with the Company's handling of the business and if he is, if he has any friends around that he could recommend me to. * * *

* * * * *

The officers of the Metropolitan Finance Corporation are Mr. M. R. Braun and Mr. Hugh Schroeter. I believe I met Mr. Braun first in March of 1950 at the Temple Building in Kansas City. I happened to be up in this part of the country. I had been soliciting accounts only a short time and stopped in to make his acquaintance. He didn't know I was coming. I inquired about the manner in which the accounts were handled so I could discuss the subject more intelligently in the field. We did not discuss the manner that the solicitor in the field would handle accounts.

* * * * *

I am not restricted to any particular territory in soliciting accounts but can go anywhere I want to.

I have visited Georgia at least five or six times, Florida once, Alabama three or four different times. I had an apartment for my headquarters in Louisiana for about

three years, and from there I would take turns up through Arkansas, Alabama and Mississippi, then back into Louisiana for a while. In other words, I expect I worked twenty or twenty-five towns in Louisiana.

* * * * *

None of the [other] states that I work in demand any kind of license from me. * * *

I do not know if Alabama has an unemployment tax. I have never been employed in Alabama or unemployed in Alabama. I am not under social security. I do not know if Alabama has a workmen's compensation law.

I do not know when I am coming up to Wisconsin. I do not have any present plans about coming up there before next spring anyway.

* * * * *

H. A. Meyers, Examined by Mr. Tulane.

My name is H. A. Meyers, and I live in Kansas City, Missouri. I have lived here for about a year and a half. I am not married and I am 66 years old. At present I am working on getting delinquent accounts for the Metropolitan Finance Corporation. * * *

* * * * *

I have listened to the testimony of Mr. Cammie B. Holman. I started with the Metropolitan Finance Corporation after I noticed an Ad in the Opportunity magazine about last July. I called at the Metropolitan Finance Corporation's office in July of 1953. * * *

During the first six months of 1954 I made a few calls on prospective clients to solicit accounts for the Metropolitan Finance Corporation. Some of these calls were made in Kansas, in Mission and Overland Park. They are suburbs of Kansas City, Kansas. * * *

When I introduced myself to a prospective client I would

say, "I am Mr. Meyers and I am representing the Metropolitan Finance Corporation and we are specialists on collecting delinquent accounts."

I would mention that we collect or make no charge. I described to them our plan. Then, maybe I would hand them this sheet, that is Exhibit 5. * * *

I first met Mr. Braun in July, 1953. I picked up my supplies at the first meeting. At this time we discussed the collection procedures of the Metropolitan Finance Corporation. * * *

* * * * *

Defendant's Exhibits 1, 2, 3, 4 and 5 to Depositions (not printed)

[End of Appendix II.]